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11                  UNITED STATES DISTRICT COURT

12                  CENTRAL DISTRICT OF CALIFORNIA

13                        SOUTHERN DIVISION

14
     BROADCOM CORPORATION and            Case No. 8:20-cv-529
15   AVAGO TECHNOLOGIES
     INTERNATIONAL SALES PTE.            **DEFENDANT NETFLIX, INC.'S**
16   LIMITED,                            **REPLY IN SUPPORT OF ITS**
                                         **MOTION TO DISMISS THE FIRST,**
17             Plaintiffs,               **THIRD, FOURTH, AND FIFTH**
                                         **CLAIMS OF THE FIRST**
18        v.                             **AMENDED COMPLAINT**

19   NETFLIX, INC.,                      Date:      July 27, 2020
                                         Time:      1:30 P.M.
20             Defendant.                Dept.:     Courtroom 10C, 10th Floor
                                         Judge:     Hon. James V. Selna
21

22                                       Date Filed:  March 13, 2020

23                                       Trial Date:  TBD

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         THIRD, FOURTH, AND FIFTH CLAIMS OF THE FIRST AMENDED COMPLAINT
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## I.    INTRODUCTION

Netflix's motion to dismiss is ripe for adjudication.  In its Opposition, Broadcom does not identify any factual dispute that would preclude decision under Rule 12.  Nor does Broadcom argue that claim construction is required to resolve the dispute.  And, despite amending its complaint, Broadcom continues to rely on the same, conclusory allegations of novelty as in its initial complaint instead of alleging facts that show that its inventions are inventive.  Therefore, the question before the Court is a pure question of law: Can conclusory allegations of novelty plug the gap when eligible subject matter cannot be found within the asserted claims themselves?  The Federal Circuit has repeatedly and definitively answered that question in the negative.  *See, e.g.*, *RecogniCorp, LLC v. Nintendo Co., Ltd.*, 855 F.3d 1322, 1327 (Fed. Cir. 2017); *Ericsson, Inc. v. TCL Commc'n Tech. Holdings Ltd.*, 955 F.3d 1317, 1330 (Fed. Cir. 2020); *Am. Axle & Mfg. Co. v. Neapco Holdings, LLC*, 939 F.3d 1355, 1363 (Fed. Cir. 2019); *ChargePoint, Inc. v. SemaConnect, Inc.*, 920 F.3d 759, 766 (Fed. Cir. 2019), *cert. denied*, 140 S. Ct. 983 (2020); *Elec. Power Grp., LLC v. Alstom, S.A.*, 830 F.3d 1350, 1353 (Fed. Cir. 2016).  Nor does any alleged novelty over prior art—Broadcom's *Alice* step 1 argument throughout its brief—address the question of abstraction under § 101.

In its opposition, Broadcom fails to offer any support for its conclusory statements of novelty.  It fails to support them with language from the claims themselves or to offer any facts in support of the allegations.  Instead, Broadcom maintains that its allegations alone, taken as true, prevent dismissal at this stage.  But the Court need not credit conclusory statements or arguments regarding non-abstraction and inventiveness.  *See Move, Inc. v. Real Estate Alliance Ltd.*, 721 F. App'x 950, 956–57 (Fed. Cir. 2018), *cert. denied*, 139 S. Ct. 457 (2018) (rejecting "conclusory" allegations of inventiveness and relying on the claim recitations to hold that patent was directed towards abstract idea); Netflix's Mem. in Supp. of its

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Mot. to Dismiss Am. Compl. ("Memo") at 2.  Broadcom's conclusory allegations create no dispute of fact to preclude dismissal.  *See, e.g., SAP Am., Inc. v. InvestPic, LLC*, 898 F.3d 1161, 1166 (Fed. Cir. 2018), *cert. denied*, 139 S. Ct. 2747 (2019).  Throughout its opposition, Broadcom argues that Netflix has oversimplified the patents, which it argues recite improvements in computer functionality.  To prove the point, however, Broadcom relies on the very type of functional language that the Federal Circuit has repeatedly held ineligible under § 101.  *Elec. Power Grp., 830 F.3d at 1356.*  Broadcom sidesteps these and other controlling Federal Circuit cases, cited in the opening brief, and asks this Court to rely instead upon various nonprecedential, district court decisions to uphold the functional claim language in its patents.  *See* Mem. In Supp. of Pls.' Opp. to Mot. to Dismiss ("Opp.") at 6, 7, 9, 13, 14, 25.  But none of these cases are availing; they involve technical solutions to technical problems.  By contrast, the first, third, fourth, and fifth claims of Plaintiffs' first amended complaint assert claims that instruct generic computer components to carry out abstract and functional results on a network or on the internet.  That is not enough.  *Bascom Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1348 (Fed. Cir. 2016).  Further amendment would be futile.  The claims are "invalid as a matter of law" such that additional allegations would neither "be consistent with the patent intrinsic record" nor "support a position of patent eligibility[.]"  *Accelerated Memory Tech, LLC v. Hulu, LLC*, 2020 WL 1934979 at *7 (C.D. Cal. 2020).  Accordingly, the Court should dismiss them with prejudice.

## II.   ARGUMENT

### A.   The '079 Patent is ineligible.

#### 1.   '079 claim 1 is directed to the abstract idea of redirecting traffic flow based on congestion.

Broadcom quibbles with Netflix's formulation of the abstract idea, arguing that the '079 patent is directed to "balancing data traffic among network links that

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1   have different speeds, capabilities, and congestion levels (heterogeneous links), and

2   that transfer data between the networked computers and other devices." Opp. at 1

3   (citing '079 Patent 1:40-43). That formulation is no less abstract. Balancing data

4   traffic based on speed, capability, and congestion, and then transferring that data, is

5   a pure abstraction, and fits neatly within a line of Federal Circuit precedent so

6   holding. *See, e.g.*, *Two-Way Media, Ltd. v. Comcast Cable Commc'ns, LLC*, 874

7   F.3d 1329, 1339 (Fed. Cir. 2017), *cert. denied*, 139 S. Ct. 378 (2018) (invalidating

8   a method addressing "excessive loads on a source server, network congestion, [and]

9   unwelcome variations in delivery times"); *Cellspin Soft, Inc. v. Fitbit, Inc.*, 927

10   F.3d 1306, 1319 (Fed. Cir. 2019), *cert. denied*, *Garmin USA, Inc. v. Cellspin Soft,*

11   *Inc.*, 140 S. Ct. 907 (2020) (distinguishing the abstract idea of "transferring" data).

12   Thus, the Court should invalidate this claim under either abstract formulation.

13          And Claim 1 of the '079 patent does not actually recite "computers and other

14   devices." But even allowing Broadcom's attempt to inject a bit of hardware into its

15   claims where none can be found, the Federal Circuit has already held that

16   performing the abstract idea on a network with "computers and other devices" does

17   not make a claim patent eligible. *See Intellectual Ventures I LLC v. Capital One*

18   *Bank (USA)*, 792 F.3d 1363, 1367 (Fed. Cir. 2015) (reciting an Internet or other

19   communication network "does not render the claims any less abstract").

20          Broadcom next maintains that claim 1 of the '079 patent "provide[s]

21   significant benefits over the then-existing art." Opp. at 6. But advancement over

22   prior art is irrelevant to the question of abstractness under *Alice* step 1. *See Affinity*

23   *Labs of Tex., LLC v. DIRECTV, LLC*, 838 F.3d 1253, 1263 n.3 (Fed. Cir. 2016)

24   (distinguishing between the question of abstractness and the issue of novelty).

25   Indeed, Broadcom's argument betrays a miscomprehension of the scope of eligible

26   subject matter that infects its entire opposition and first amended complaint.

27   Section 101 is a gatekeeper whose function is to prevent any person from

28   preempting a whole field by claiming to have invented the abstract idea itself. *See*

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1   *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S. 208, 216 (2014) (cautioning

2   against "grant[ing] a monopoly over an abstract idea") (quoting *Bilski v. Kappos*,

3   561 U.S. 593, 611-12 (2010)).  Regardless of its novelty, and before that

4   assessment even takes place, Section 101 functions to keep abstract ideas out of the

5   realm of patentable subject matter.  Therefore, at step 1, it is simply irrelevant that

6   the abstract idea may not be found in the prior art—no patent can be had on it.  *See*

7   *Data Engine Technologies LLC v. Google LLC*, 906 F.3d 999, 1011 (Fed. Cir.

8   2018) (distinguishing between the novelty question which is "reserved for §§ 102

9   and 103" and the "question of abstraction" under § 101).

10          As it does for most of its patents, Broadcom labors in vain to distinguish

11   binding Federal Circuit precedent in an effort to persuade the Court to follow inapt,

12   extra-circuit decisions.  *See* Opp. at 7 (citing *Sycamore IP Holdings LLC v. AT&T*

13   *Corp.*, 294 F. Supp. 3d 620, 652 (E.D. Tex. 2018), *aff'd*, 773 F. App'x 624 (Fed.

14   Cir. 2019)).[1]  In doing so, Broadcom generously proposes that claim 1 of the '079

15   patent is equivalent to the compression of signals that "reduces the number of bits

16   required to transmit a particular communication" across different computer signal

17   protocols, without compromising any portion of the communication. *Sycamore*, 294

18   F. Supp. 3d at 650, 652.  The technical solution that improved the technical

19   performance of compression protocols in *Sycamore* is a far cry from what the '079

20   patent claims.  Indeed, the U.S. District Court for the Eastern District of Texas

21   made clear in *Sycamore* that, although the compression protocol at issue involved

22   the manipulation of data (which, alone, is unpatentable), "the point of the invention

23   is not simply the transmission of data in coded form, but the conversion of data into

24   a form that makes the communication of the data more efficient." *Id.* at 652.

25   Compressing data merely "to facilitate network communications" would be

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[1] Notably, the Court in *Sycamore* did not affirmatively hold that the patent at issue
was eligible. *Sycamore*, 294 F. Supp. 3d at 654 ("[I]t is not clear on the summary
judgment record before the Court that the asserted claims of the '405 patent are
directed to an abstract idea and do not embody an inventive concept").

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1   "regarded as directed to an abstract idea[.]" *Id.* at 653-54.

2        Here, Broadcom claims precisely what the court in *Sycamore* (and the

3   Federal Circuit) have explained is ineligible.  Broadcom states: "By balancing data

4   traffic over heterogeneous links, the invention improves the speed and efficiency of

5   data transmission within the network."  Opp at 1-2.  But speed and efficiency alone

6   are not an improvement to computing: "[Federal Circuit] precedent is clear that

7   merely adding computer functionality to increase the speed or efficiency of the

8   process does not confer patent eligibility on an otherwise abstract idea."

9   *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1370 (Fed.

10   Cir. 2015). *See also Ericsson, Inc. v. TCL Commc'n Tech. Holdings Ltd.*, 955 F.3d

11   1317, 1330 (Fed. Cir. 2020) (same).  *Sycamore* counsels in favor of dismissal.

12        Instead, *Two-Way* directly applies to the '079 patent and compels dismissal.

13   874 F.3d at 1337, 1339 (finding abstract "a method for routing information" to

14   combat "excessive loads on a source server, network congestion, [and] unwelcome

15   variations in delivery times").  Broadcom does not resist the Federal Circuit's logic

16   in *Two-Way*; rather, it concedes that the analogy "depends on Netflix's

17   characterization of the claimed technology as directed to redirecting traffic flow

18   based on congestion."  Opp. at 8 (internal quotation marks omitted).  Yet,

19   "[s]tripped of excess verbiage," *Affinity Labs of Tex., LLC v. DIRECTV, LLC*, 838

20   F.3d 1253, 1256 (Fed. Cir. 2016), that is exactly what the '079 patent describes.

21   Broadcom's only argument contesting this characterization is that it is an

22   "oversimplified construction" of the "five-part" claim, followed by a block

23   quotation of the claim itself.  Opp. at 8.  Neither is this a sufficient answer, nor is

24   the oversimplification theory availing in any event.  To focus on the number of

25   claim limitations, over their substance, would "make patent eligibility depend

26   simply on the draftsman's art."  *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 573 U.S.

27   208, 226 (2014) (internal quotation marks omitted).  Indeed, Broadcom's own

28   description of the invention—"balancing data traffic among network links that have

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1   different speeds, capabilities, and congestion levels (heterogeneous links)," Opp. at

2   1; '079 Patent 1:40-41—is hard to distinguish from Netflix's, which is firmly

3   rooted in the claim language and specification.  Memo at 7-8.  Accordingly, *Two-*

4   *Way* controls, and the '079 patent is abstract.

5       Broadcom next searches in vain for a machine within the scope of its claims.

6   Opp. at 8.  The best is can do is "network links."  *Id.*  But Broadcom again brushes

7   up against Federal Circuit precedent.  Even generously assuming Broadcom's

8   assertion that networks links require a computer, "communicating over a network"

9   is abstract and "adding one abstract idea to another abstract idea does not render the

10  claim non-abstract."  *ChargePoint, Inc. v. SemaConnect, Inc.*, 920 F.3d 759, 771

11  (Fed. Cir. 2019), *cert. denied*, 140 S. Ct. 983 (2020) (alterations omitted).  Nor does

12  Broadcom convince with the newly alleged "components capable of transmitting

13  electronic data between devices within a computer network[,]" Opp. at 8, since

14  these are classically generic computer components.  "An abstract idea on an

15  Internet computer network *or* on a generic computer is still an abstract idea."

16  *Bascom Global Internet Services, Inc. v. AT&T Mobility LLC*, 827 F.3d 1341, 1348

17  (Fed. Cir. 2016) (emphasis added) (internal quotation marks omitted).

18      Unable to satisfy Federal Circuit precedent, Broadcom is left to argue that it

19  is not binding.  Broadcom contends that *CyberSource Corp. v. Retail Decisions,*

20  *Inc.*—on which Netflix relies for proposition that a claim improving computers

21  need recite one—has been abrogated by post-*Alice* decisions. Opp. at 8-9 (citing

22  654 F.3d 1366 (Fed. Cir. 2011)).  This is incorrect.  The Federal Circuit's extensive

23  reliance on *CyberSource* in post-*Alice* decisions confirms that today, as even before

24  *Alice*, "to impart patent-eligibility to an otherwise unpatentable process under the

25  theory that the process is linked to a machine" or an improvement to the

26  functionality of a machine, the claim ***at the very least*** need recite said machine or

27  computer-related limitations.  *Id.* at 1370, 1375.  *See also, e.g.*, *Ericsson*, 955 F.3d

28  at 1327; *BSG Tech LLC v. BuySeasons, Inc.*, 899 F.3d 1281, 1286 (Fed. Cir. 2018);

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1    *Intellectual Ventures I LLC v. Erie Indem. Co.*, 711 F. App'x 1012, 1015 (Fed. Cir.

2    2017).  *CyberSource* is not "outdated[,]" Opp. at 9, it is vibrant.  In the absence of a

3    claimed machine or non-generic computer component, the '079 patent is abstract.

4            Broadcom finally challenges Netflix's traffic cop analogy by concluding

5    what it must show.  Opp. at 9.  Despite asserting in conclusory fashion that "[a]

6    traffic cop's work is not analogous to processing and directing electronic data at the

7    speed required for transmission in a computer network[,]" *id.*, Broadcom does not

8    explain *why*.  And while Broadcom provides lengthy citations to cases, the

9    relevance of which go unexplained, it offers no explanation of how Netflix's

10   analogy, for example, "abstract[s] away important technical details" or is

11   "contrived" or "reverse-engineered."  *Id.*.  Redirecting traffic flow based on

12   congestion is a human activity performed by ordinary traffic cops every day.

13   Accordingly, the '079 patent is directed to an abstract idea.

### 2.    '079 claim 1 is not inventive.

15           Broadcom concludes that the '079 patent contains an inventive concept.

16   Opp. at 9.  For support, it points to allegations of inventiveness in its amended

17   complaint.  Broadcom states that "[t]hese allegations are well-supported in the

18   claim" with a mere footnote ***citing generally to the entire claim***.  *Id.* at 10 & n.22.

19   Just like the claim language itself, Broadcom never explains how the claim supports

20   these allegations.  The Court cannot credit the complaint's unsupported allegations

21   where they are not found in the claims.  *See ChargePoint*, 920 F.3d at 766

22   (emphasizing the importance of the claim language itself in the determination of

23   patentability).  Instead, the allegations simply proclaim "novel ways to solve

24   [certain] technical problems" as well as "new, improved methods and apparatuses"

25   without elaboration.  Opp. at 9-10 (quoting Am. Compl. ¶¶ 34, 35).  The Court need

26   not accept as true conclusory allegations of inventiveness.  *Move, Inc.*, 721 F.

27   App'x at 956–57.

28           Broadcom also repeats its *Alice* step 1 argument regarding the recitation of

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1   computer limitations, maintaining that the lack of any meaningful hardware or

2   software limitations is irrelevant to the question of inventiveness.  Opp. at 10.  It

3   does not deny, however, that its invention can be implemented by conventional

4   computing components, *see* '079 Patent 12:26-28, but rather suggests this is not

5   dispositive.  In doing so, Broadcom mischaracterizes Netflix's argument regarding

6   a general-purpose computer, and conflates the step 1 and step 2 inquiries.  The

7   "ability to run on a general-purpose computer" in isolation is not Netflix's

8   argument for non-inventiveness.  Rather, where the patent is directed at an abstract

9   idea at *Alice* step 1, as explained above, the general-purpose computer adds nothing

10  in the way of inventiveness at step 2.  *See BSG Tech LLC*, 899 F.3d at 1285 ("If a

11  claimed invention only performs an abstract idea on a generic computer, the

12  invention is directed to an abstract idea at step one."); *Inventor Holdings, LLC v.*

13  *Bed Bath & Beyond, Inc.*, 876 F.3d 1372, 1378 (Fed. Cir. 2017) ("[If] the only

14  components disclosed in the specification for implementing the asserted method

15  claims are unambiguously described as 'conventional' [then those] components do

16  not supply an inventive concept.") (citation omitted).  Implementation of an abstract

17  idea on a conventional computer is "the abstract idea itself."  *BSG Tech LLC*, 899

18  F.3d at 1287.  The generic computer components do not add inventiveness.[2]

19      Finally, Broadcom mistakes Netflix's argument regarding results-oriented

20  functional claims—a Section 101 issue, *see Electric Power Grp., LLC v. Alstom*

21  *S.A.*, 830 F.3d 1350, 1355 (Fed. Cir. 2016); Memo at 9—with "an enablement issue

22  under 35 U.S.C. § 112[,]" which Netflix does not argue in its motion.  Opp. at 11.

23  In doing so, Broadcom attempts to avoid subject matter eligibility, stating without

24  elaboration that "steps a.–e. of claim 1 explicitly describe 'how' transmission unit

25  traffic is balanced over network links."  *Id.*.  And, in any event, steps a. through e.

26  _____

[2] Although Broadcom quotes *SRI International, Inc. v. Cisco Systems, Inc.*, 930
27  F.3d 1295, 1303 (Fed. Cir. 2019), *cert. denied*, 140 S. Ct. 1108 (2020), swapping—
in place of the patent at issue—nearly ten lines of its own patent language, it does
28  not explain the relevance of this case. Opp. at 10-11.

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1   of claim 1 are not the *how* but rather the functions themselves: (1) ***disposing***; (2)

2   ***grouping***; (3) ***determining***; (4) ***regrouping***; (5) ***transmitting***. *Id.* at 10.[3]  The '079

3   patent is not inventive.

4          Finally, Broadcom devotes only a footnote to Netflix's argument that the

5   ordered combination of the claim limitations is conventional, without denying that

6   the sequence is intuitive.  Opp. at 11 n.24.  It does not support its suggestion that

7   the intuitive order "demonstrates that the order itself is inventive."  *Id.*

8          The '079 patent is abstract and non-inventive; accordingly, it does not claim

9   patent eligible subject matter and should be dismissed.

10         **B.     The '245 Patent is ineligible.**

11                **1.     The '245 Patent is directed to the abstract idea of routing
                           information based on user information.**

12         Broadcom rejects Netflix's explanation of the claimed invention in the '245

13  patent, without drawing any meaningful contrast.  Fussing with semantics,

14  Broadcom insists that "determining multiple routes for delivering content . . . based

15  on a provisioning profile" for a requesting user—'245 Patent 12:1—is not the same

16  as "routing information based on user information" which is abstract under *Two-*

17  *Way*.  Opp. at 12.  Broadcom does not, and cannot, seriously contend that *routing*

18  information *based* on *user* information is exactly what the patent claims in ***precisely***

19  ***those words***; rather, it suggests this is an "oversimplification."  *Id.*  It explains that

20  Netflix oversimplifies the "heart of the invention" through Netflix's "focus on user

21  information" which in turn "reduces the entire patent to dependent claim 3."  *Id.* at

22  12.  Yet, four pages later, Broadcom does an about-face when it argues that in fact

23

24  _____

25  [3] Broadcom also misstates the *Electric Power* holding.  The Federal Circuit did *not*
    affirmatively state that claims requiring an arguably inventive distribution of
    functionality are patentable.  Rather, it merely cited an "arguably inventive"

26  concept *far* more inventive than here to distinguish the unpatentable claim at issue.
    *Electric Power Grp.,* 830 F.3d at 1355-56 (citing *Bascom*, 827 F.3d at 1350

27  (involving "the installation of a filtering tool at a specific location, remote from the
    end-users, with customizable filtering features specific to each end user")).

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1   "dependent claims 3 and 6... are the ***patent's core inventive concepts***."  *Id.* at 16

2   (emphasis added).  So, Netflix's "focus on user information" does not oversimplify

3   but rather captures precisely what Broadcom itself views as the key stroke of

4   inventiveness.  Consequently, the parties do not actually dispute Netflix's

5   characterization, and *Two-Way* is controlling.  Claim 1 of the '245 patent is directed

6   at an abstract idea.

7   Broadcom suggests that its invention is directed at improvements in

8   computer functionality such as that in *Uniloc USA, Inc. v. LG Electronics. USA,*

9   *Inc.*, 957 F.3d 1303 (Fed. Cir. 2020); Opp. at 12.  But *Uniloc* supports dismissal

10   here.  As the Court explained, the claims there were eligible because they are

11   directed to "a specific asserted improvement to the functionality of the

12   communication system itself," and not merely the abstract idea.  *Uniloc*, 957 F.3d

13   at 1309.  In particular*,* the "reduction of latency experienced by parked secondary

14   stations in communication systems[,]"  *Id.* at 1307, resulted from adding "prior to

15   transmission, an additional data field[.]"  *Id.* at 1307-08.  It was "*this change*" that

16   constituted an "improvement" to functionality.  *Id.* at 1308-09 (emphasis added).

17   The '245 patent claims flunk the test set out by *Uniloc*.  The claims do not

18   contain a technical solution to a technical problem in a wireless or wired

19   communication system.  Instead, a computer is directed to determine multiple

20   routes for information based on user information, a decidedly non-technical

21   abstraction.  Broadcom's patent mirrors the claims "held ineligible in *Two-Way*

22   *Media*" which likewise "failed to concretely capture any improvement in computer

23   functionality."  *Uniloc*, 957 F.3d at 1308.  Those claims recited "a method of

24   transmitting packets of information over a communications network comprising:

25   converting information into streams of digital packets; routing the streams to users;

26   controlling the routing; and monitoring the reception of packets by the users."  *Id.*

27   A side-by-side comparison of the *Two-Way* claims with claim 1 of the '245

28   patent—comprising (1) "receiving from a user device…a request for a service"; (2)

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1    "determining multiple routes" to deliver requested content based on user

2    characteristics; and (3) "delivering said content…via said determined multiple

3    routes"—reveals virtually no daylight between these claims.  '245 Claim 1.

4    Accordingly, *Two-Way* dictates the outcome here, and claim 1 of the '245 patent is

5    abstract.

6         Broadcom props up a reference to quality of service ("QoS") in its opposition

7    in an effort to inject some jargon into the mix.  Quality of service is itself an

8    abstract idea.  Broadcom argues that the claimed invention "improves the quality of

9    service of data transmissions through the identification and selection of multiple

10   routes[.]"  Opp. at 13.  But none of the asserted claims—including the provisioning

11   profile recited in dependent claim 3—is directed at or limited to a technical solution

12   to a technical problem with quality of service.[4]  Rather, the patent is directed at

13   determining "multiple routes" based on user characteristics, *such as* "desired QoS

14   for one or more services[.]"  '245 Patent at 12:8-11.  Claim 1 itself says *nothing*

15   about QoS; at most, claim 3 includes it among a non-exhaustive list of "user

16   characteristics."  Moreover, this Court is not free simply to disregard all of the other

17   user characteristics claim 3 recites.  *Id.* at 12:8-11.  The asserted claims neither

18   provide a technical solution to improve QoS nor "change[] the normal operation of

19   the communication system itself[.]"  *Uniloc*, 957 F.3d at 1308; Opp. at 13.

20        Furthermore, contrary to Broadcom's assertion, Netflix's reliance on

21   *Intellectual Ventures I LLC v. Capital One Bank (USA)* is not misplaced; rather, it

22   is driven by the patent's own reliance on a "provisioning profile" described in

23   dependent claim 3.  *Intellectual Ventures* held that "the 'as a function of the user's

24   personal characteristics' limitation…is an abstract idea."  *Intellectual Ventures I*

25   *LLC*, 792 F.3d at 1369.  The Federal Circuit, in this case as well as the other cases

26   _____

27   [4] Furthermore, *Uniloc* did not discuss quality of service; rather, as discussed, the "change in the manner of transmitting data" that the Court described was the actual addition of data to content that was subsequently transmitted.  *Uniloc*, 957 F.3d at

28   1308.  Broadcom does not contend, nor can it, that its invention alters content.

11

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1   Netflix cited in its opening brief—Memo at 11-12—did not say such a limitation

2   was abstract only in the context of "targeted marketing."  Opp. at 14.

3        Finally, Broadcom's resistance to Netflix's dinner host analogy, as with the

4   '079 patent, misses the forest for the trees.  Ignoring the main question at *Alice* step

5   1—whether the invention is directed at an abstract idea—Broadcom instead

6   maintains that the analogy is inapt because the invention is allegedly internet-based.

7   But "use of the Internet does not transform an otherwise abstract idea into patent-

8   eligible subject matter."  *Ultramercial, Inc. v. Hulu, LLC*, 772 F.3d 709, 716 (Fed.

9   Cir. 2014).  The underlying idea behind the '245 patent—routing information based

10  on user information—is capable of human performance.  *See also Ericsson*, 955

11  F.3d at 1327 (explaining that a process wherein "a request is made for access to a

12  resource, that request is received and evaluated, and then the request is either

13  granted or not" is "exactly the sort of process that can be performed in the human

14  mind") (citations omitted).  Accordingly, the patent is directed at an abstract idea.

15              **2.      The '245 Patent is not inventive.**

16       Broadcom asserts that three elements—(1) identification of multiple routes

17  for content delivery; (2) based on a provisioning profile; and (3) all via a network

18  management ("NM") server—supply an inventive concept.  Opp. at 14-15.  It

19  argues that each of the elements standing alone is inventive.  *Id.* at 15.  But the

20  Federal Circuit has already held that identifying multiple routes is abstract.  *Two-*

21  *Way Media*, 874 F.3d at 1337.  And the Federal Circuit has held that routing

22  information based on user information is abstract.  *Intellectual Ventures I LLC*, 792

23  F.3d at 1369–70.  And the Federal Circuit has held that a "network management

24  server" is a generic computer component.  *See In re TLI Commc'ns LLC Patent*

25  *Litig.*, 823 F.3d 607, 614 (Fed. Cir. 2016).  Broadcom abandons any argument that

26  the ordered combination of claim 1 is inventive.  Opp. at 15; *see also Shorter v. Los*

27  *Angeles Unified Sch. Dist.*, 2013 WL 6331204 at \*5 (C.D. Cal. 2013) (holding that

28  failure by a plaintiff's opposition to address arguments raised in a defendant's

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1    motion to dismiss constitutes "waiver or abandonment of those issues").  But the

2    ordered combination fares no better.  Heaping one abstraction upon another and

3    telling a generic "network management server" to do it does not a patent make.

4    *ChargePoint, Inc*, 920 F.3d at 771.

5         Broadcom therefore instead rests on the allegations in the amended complaint

6    that describe the claimed invention as a "novel solution for transmitting digital

7    media content over a communication network via multiple routes, using a network

8    management server and a provisioning profile" and conclude that this was "not

9    well-understood, routine, or conventional at the time . . . because it claims a ***new***

10   ***and specific improvement over the prior art*.**  Opp. at 15 (citing Am. Compl. ¶

11   107) (emphasis added).  But, again, such novelty is irrelevant to patent eligibility.

12   *See Diamond v. Diehr*, 450 U.S. 175, 190, (1981) ("whether a particular invention

13   is novel is wholly apart from whether the invention falls into a category of statutory

14   subject matter") (internal quotations omitted).

15        Broadcom's allegations about the dependent claims are even more

16   conclusory.  "The ordered combination of elements in each of claims 3 and 6, in

17   conjunction with the elements of the claim[] from which they depend, . . . recite

18   unconventional, new, and improved digital media content delivery methods that

19   were not well-understood at the time of the '245 Patent."  Opp. at 15 (quoting FAC

20   ¶ 110).  Just saying it doesn't make it so—even on a motion to dismiss.  *Ashcroft v.*

21   *Iqbal*, 556 U.S. 662, 679 (2009) ("[A] court considering a motion to dismiss can

22   choose to begin by identifying pleadings that, because they are no more than

23   conclusions, are not entitled to the assumption of truth.").  Like its claims,

24   Broadcom never tells us how the claims achieve this supposed improvement.

25        So Broadcom's primary argument is that its functional claims produce an

26   abstract benefit.  Here it is, in Broadcom's own words: "The provisioning profile

27   contains information relevant to the user device requesting content, and enables the

28   network management server to intelligently select the most reliable, best-suited

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1  route through the network." Opp. at 16. On this the parties agree: adjectives aside,

2  the claims tell a computer to do without ever telling it *how* to do, much less reciting

3  an inventive technical solution. Instead, claim 1 instructs a server to select one or

4  more routes based on information—any information—about the user. Claim 3 says

5  the information should include one or more of client account information, credit

6  verification, preferred service types (e.g., call me, don't Facetime), and desired

7  quality of service. Claim 6 instructs: choose the routes "based on priority."

8  Telling the computerized brain to "intelligently select" and use the "best-suited

9  route"—which the claims do not actually recite—is not a technical solution.

10  *Intellectual Ventures I LLC*, 792 F.3d at 1371 ("Requiring the use of a 'software'

11  'brain' 'tasked with tailoring information and providing it to the user' provides no

12  additional limitation beyond applying an abstract idea, restricted to the Internet, on

13  a generic computer.")

14         **C.**    **The '992 Patent is ineligible.**

15             **1.**    **The asserted claims of the '992 patent are directed to the**
                    **abstract idea of switching from lower- to higher-quality**
16                      **media when available.**

17       The asserted claims of the '992 patent claim the abstract idea of switching

18  from lower- to higher-quality media when available. In an effort to show

19  otherwise, Broadcom argues that certain elements of the claims "specifically

20  limit[]" them. *See* Opp. at 16-17. This argument inappropriately focuses on "what

21  the claim elements add"—an inquiry that is typically reserved for step 2 of the *Alice*

22  analysis. *Elec. Power Grp.* 830 F.3d at 1353 (explaining that at step 1, courts look

23  to the "focus" of the asserted claims). In any event, the identified claim elements

24  do not render the asserted claims patent eligible at step 1.

25       Broadcom first argues that the asserted claims are not abstract because they

26  limit the step that determines digital media quality to the "use of bandwidth." Opp.

27  at 16. But to be patent eligible, a claim that recites functional results must

28  "sufficiently describe how to achieve these results in a non-abstract way." *Two-*

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1     *Way Media Ltd. v. Comcast Cable Commc'ns*, LLC, 874 F.3d 1329, 1337 (Fed. Cir.

2     2017), *cert. denied*, 139 S. Ct. 378 (2018). Here, independent claim 1 generically

3     recites the step of "*determining* that a network connection with a second system is .

4     . . characterized by a communication bandwidth that is high enough to provide the

5     digital media content to the user at a quality level higher than the current quality

6     level." '992 patent at claim 1 (emphasis added). It claims no way of making such a

7     determination. *Cf. Data Scape Ltd. v. W. Digital Corp.*, 2020 WL 3564683, at *3

8     (Fed. Cir. July 1, 2020) (rejecting a claim that "generically recites editing

9     information, detecting the connection of one apparatus to another, comparing data

10    on the two devices, and transmitting selected data from one apparatus to another").

11    In fact, the specification intentionally declines to limit this step of the claimed

12    invention, stating that the determination "may" concern "a minimum bandwidth,"

13    "a particular level of reliability," "a particular set of communication protocols," or

14    even "secure communication capability." '992 patent 5:25-64. Because

15    "information of communication capability may include any of a large number of

16    communication characteristics," the specification concludes, "the scope of various

17    aspects of the present invention should not be limited by particular communication

18    or communication link characteristics." *Id.* 6:3-7. This step therefore cannot save

19    the claim as a whole. *Cf. Elec. Commc'n Techs., LLC v. ShoppersChoice.com,* 958

20    F.3d 1178, 1181-82 (Fed. Cir. 2020) (finding claim steps to be abstract when the

21    specification declined to limit a key term in the steps).

22        Nor does the confinement of this determination to a "portable system" or

23    "digital media" render the claim non-abstract, as Broadcom contends. Opp. at 17.

24    The Federal Circuit has explicitly rejected such an argument. In *Affinity Labs of*

25    *Texas, LLC v. Amazon.com Inc.*, it held that "the concept of delivering user-selected

26    *media content* to *portable devices* is an abstract idea, as that term is used in the

27    section 101 context." 838 F.3d 1266, 1269 (Fed. Cir. 2016) (emphasis added). It

28    reasoned that the recitation of "wireless streaming of media" did not render an

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1   otherwise abstract idea patent eligible because: (1) the patent did not "disclose any

2   particular mechanism for wirelessly streaming content to a handheld device," and

3   (2) "[i]t is not debatable . . . that the delivery of media content to electronic devices

4   was well known long before the priority date [, March 28, 2000,] of the [asserted

5   patent]." *Id.* at 1269-70.  So too here.  As described in Section II.C.2, *infra*, the

6   '992 patent does not limit the mechanism by which the "portable system" performs

7   the claim steps.  And, limiting the asserted claims to a "portable device" recites

8   nothing more than a generic environment in which to carry out the otherwise

9   abstract idea of switching from lower- to higher-quality media when available.  *Cf.*

10  *In re TLI Commc'ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016).

11          Broadcom next argues that the limitations of the dependent claims

12  sufficiently "narrow and define the type of media delivered and the manner of its

13  delivery."  *See* Opp. at 17.  Broadcom again disregards Federal Circuit precedent.

14  Dependent claims 2 and 3 provide that the "digital media content" of independent

15  claim 1 is video media and audio media, respectively.  But in *Electric Power*, the

16  court stated that it "ha[s] treated collecting information, including when limited to

17  particular content (*which does not change its character as information*), as within

18  the realm of abstract ideas."  830 F.3d at 1353 (emphasis added) (collecting cases);

19  *see also Two-Way Media*, 874 F.3d at 1333, 1338 ("streaming audio/visual data

20  over a communications system" merely recites the abstract concept of

21  "manipulat[ing] data").  Thus, specifying that the content is audio or video media

22  does not render the claims non-abstract.  These are conventional types of media.

23          Likewise, dependent claim 5 provides that the method of claim 1 is

24  performed automatically.  But the Federal Circuit has found that automating an

25  otherwise abstract idea via a computer does not render a claim patent eligible.  *See*

26  *OIP Techs., Inc. v. Amazon.com, Inc.*, 788 F.3d 1359, 1363 (Fed. Cir. 2015); *see*

27  *also Intellectual Ventures I LLC v. Symantec Corp.*, 838 F.3d 1307, 1317 (Fed. Cir.

28  2016) (rejecting a claim that involved automating an otherwise abstract idea).  To

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1    support its argument that dependent claim 5 renders the invention non-abstract,

2    Broadcom cites *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299,

3    1313 (Fed. Cir. 2016).  But *McRO* is inapplicable; in that case, automation

4    fundamentally improved a process that previously could only be performed by the

5    subjective judgment of humans.  Here, Broadcom does not allege that automation

6    itself is an improvement over prior methods.  Rather, the automation recited in

7    claim 5 is "at most an improvement to [an] abstract concept."  *See Customedia*

8    *Techs. LLC v. Dish Networks Corp,* 951 F.3d 1359, 1363–65 (Fed. Cir. 2020).

9            Broadcom finally argues that the eligibility inquiry should end at step 1

10   because the asserted claims do not preempt "approaches that use different criteria"

11   to make a media quality determination.  Opp. at 18.  To support this argument,

12   Broadcom contends that a "driving concern" in the *Electric Power* court's analysis

13   was preemption.  Opp. at 17.  As a preliminary matter, this characterization is

14   misleading.  In *Electric Power*, the Federal Circuit remarked that the preemption

15   analysis quoted by Broadcom was "one helpful way of double-checking the

16   application of the [*Alice*] framework"—a framework that the court had already

17   performed in full when it made its observation.  830 F.3d at 1356.  Regardless,

18   where, as here, "a patent's claims are deemed only to disclose patent ineligible

19   subject matter under the *Alice* framework, . . . preemption concerns are fully

20   addressed and made moot."  *Two-Way Media*, 874 F.3d at 1339.  Furthermore, even

21   if preemption was the touchstone, Broadcom's argument would fail.  As noted

22   above, the determining step was drafted in an effort to encompass any way of

23   making the bandwidth determination; instead of claiming a particular way of

24   making the determination, it effectively claims the idea of the determination itself.

25           **2.      The asserted claims of the '992 patent do not survive step 2**
             **of the *Alice* analysis.**

26

27       The asserted claims of the '992 patent do not contain an inventive step that

     would render them patent eligible.  The specification may provide context to

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1  elements of a claim, but an "inventive concept" must be excluded from the step 2

2  analysis if it is entirely omitted from the claim language. *See Two-Way Media*, 874

3  F.3d at 1339. Broadcom ignores this precedent, arguing that the '992 patent

4  contains several "inventive steps," ***none of which*** are recited in asserted claims.

5       ***First***, Broadcom argues that the asserted claims satisfy *Alice* step 2 because

6  they "attempt to solve the problem of delivering low-quality content in unstable

7  network environments by using a quality-of-service-based network resource

8  allocation delivery system." Opp. at 19. But nowhere do the claims recite the

9  delivery of "low-quality content." Moreover, the specification does not present the

10 delivery of "low-quality content" as a "problem" to be solved. And even if the

11 invention did purport to solve such a problem, it would not pass muster under step 2

12 because it recites the attempted solution in a generic, functional way. *See* Memo at

13 19-20 (citing aspects of the '992 specification that reveal each step of the claimed

14 method is generic); *cf. Affinity Labs*, 838 F.3d at 1271 (rejecting allegedly inventive

15 features of a claim when they were "described and claimed generically rather than

16 with the specificity necessary to show how those components provide a concrete

17 solution to the problem addressed by the patent").

18       ***Second***, relying on the conclusory allegations of its complaint, Broadcom

19 argues that the "quality control modules" and "communication modules" identified

20 in the specification render the asserted claims inventive. Opp. at 19 (quoting Am.

21 Compl. ¶ 135). But the asserted claims make no reference to those modules. Even

22 if the Court were to use the specification as a "lens for understanding the claims,"

23 as Broadcom urges, it could not understand what isn't there—"the problem is that

24 no inventive concept resides in the claims." *Two-Way Media*, 874 F.3d at 1340.

25 The "modules" therefore do not supply an inventive step.

26       The alleged "modules," like the other aspects of the '992 patent, are also

27 described in entirely generic terms. In *TLI*, the Federal Circuit found that the

28 recitation of an "image analysis unit" and a "control unit" could not save a claimed

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1    invention at step 2 because "the specification limits its discussion of these

2    components to abstract functional descriptions devoid of technical explanation as to

3    how to implement the invention."  823 F.3d at 614-615.  According to the Court's

4    review of the specification, the "image analysis unit predictably analyze[d] . . .

5    digital images," while the "control unit predictably control[led] various aspects of

6    the claimed functionality."  *Id.* at 615 (internal quotations omitted).  The court

7    reasoned that "[s]uch vague, functional descriptions of server components are

8    insufficient to transform the abstract idea into a patent-eligible invention."  *Id.*

9    Here, too, the specification provides that the communication module "may establish

10   a wireless communication link based on any variety of wireless communication

11   protocols and standards."  '992 patent 21:37-54.  Likewise, the quality control

12   module "may . . . communicate a variety of information over the communication

13   link . . . to make [a quality] determination."  *Id.* 22:13-16.  The modules are not

14   limited to any particular "hardware or software implementations."  *Id.* at 26:1-13.

15   Even if it were present in the claim language, this purely generic architecture would

16   not render the asserted claims patent eligible.

17       ***Third***, Broadcom argues that the asserted claims are inventive because

18   "Claim 1 . . . recites a novel solution" of obtaining higher-quality content "from

19   another source," while in the prior art, "the source of the content remained the same

20   between the two systems."  Opp. at 19-20 (quoting Am. Compl. ¶ 143).  Broadcom

21   offers no legal authority to support this proposition, instead claiming that its

22   allegations "are sufficient to plead inventiveness, and are well-supported by the

23   specification and the claim."  *Id.* at 20.  Not so.  Claim 1 does not specify that the

24   second system must obtain its information from a different source than the first, and

25   the specification explicitly does not limit the invention by "characteristics of

26   particular information, information sources, or particular links to such information

27   sources" the second system may have.  '992 patent at 6:19-39.  Regardless, novelty

28   is irrelevant to eligibility.  *See Elec. Commc'n Techs.*, 958 F.3d at 1182 ("We may

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1   assume that the techniques claimed are groundbreaking, innovative, or even

2   brilliant, but that is not enough for eligibility.") (quotations and alterations omitted).

3       *Fourth*, and finally, Broadcom argues that the dependent claims supply an

4   inventive step, falsely claiming that Netflix "improperly remove[d] the dependent

5   claims from [its] analysis." Opp. at 20. To the contrary, Netflix specifically

6   addressed the dependent claims in its opening brief. *See* Memo at 21-22. In any

7   event, specifying that media could be audio or video media is not inventive; such

8   types of media were entirely conventional at the time of the invention. *See Electr.*

9   *Power*, 830 F.3d at 1353. Similarly, automating an otherwise abstract idea is not

10  inventive. *See OIP Techs.* 788 F.3d at 1363; *Customedia*, 951 F.3d at 1363-65.

11  The dependent claims add nothing to render the asserted claims patent eligible.

12      Crucially, none of Broadcom's arguments raise a factual issue that would

13  preclude the Court from invalidating the asserted claims. The inventive features

14  that Broadcom alleges are entirely omitted from the asserted claims, and simply

15  stating that a patent is inventive does not make it so. *See Move, Inc. v. Real Estate*

16  *Alliance Ltd.*, 721 F. App'x 950, 956–57 (Fed. Cir. 2018), *cert. denied*, 139 S. Ct.

17  457 (2018). Accordingly, the asserted claims do not survive *Alice* step 2.

18      **D.    The '375 Patent is ineligible.**

19          **1.    Claim 15 of the '375 Patent is directed to the abstract idea of**

20                   **distributing data through a network.**

21      Broadcom takes issue with the fact that Claim 15 of the '375 Patent is

22  directed to the abstract idea of distributing data through a network. Opp. at 21. But

23  Broadcom merely replaces one abstract idea with another, slightly longer variation.

24  Broadcom repeatedly concedes throughout its opposition, as it must, that the '375

25  patent is directed to the abstract idea of "**distributing** encoded streams of **data** . . .

26  to remote locations." Opp. at 22 (emphasis added); *see also id.* at 3 ("system for

27  delivering digital video content" and "delivery of compressed video content"), 20–

28  21 ("delivery of compressed video content"), 21 ("distribute video content" and

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1    "deliver[] video on demand"), 22 ("delivery of compressed video content"), 23

2    ("distributing the compressed data streams").  Thus, even Broadcom's own

3    description of the patent confirms that, stripped of its verbiage, claim 15 of the '375

4    patent recites nothing more than a patent-ineligible "method for routing information

5    using result-based functional language."  *Two-Way Media*, 874 F.3d at 1337.

6           Broadcom attempts to salvage claim 15 from abstraction by arguing that "the

7    character of the claims as a whole is directed to a new system, with specific

8    physical components, for delivering video on demand remotely."  Opp. at 21.  But

9    Broadcom's contention as to each of these points—the delivery of (1) video content

10   (2) remotely (3) with specific physical components—is belied by the claim

11   language itself, the specification, and controlling Federal Circuit authority.

12          ***First***, limiting the claimed distribution of data "to particular content"—here,

13   compressed video data—does not transform an otherwise abstract idea into patent-

14   eligible subject matter.  *Elec. Power Grp.*, 830 F.3d at 1353.  Broadcom's

15   opposition as to the '375 patent fails to address, much less overcome, this

16   fundamental tenet of patent-eligibility jurisprudence.  *Alice Corp. Pty. v. CLS Bank*

17   *Int'l*, 573 U.S. 208, 223, (2014) ("limiting the use of an abstract idea to a particular

18   technological environment" insufficient to confer patent eligibility (citing *Bilski v.*

19   *Kappos*, 561 U.S. 593, 610-11 (2010))) (internal quotations omitted).

20          ***Second***, Broadcom's attempt to reframe claim 15 as being directed to the

21   distribution of data "to remote locations" is not only untethered to the claim

22   language—which says *nothing* about "remote locations"[5]—but also does not render

23   the claim any less abstract.  Instead, Broadcom's position highlights the

24   abstractness of its purported invention.  It is hard to imagine something more

25   _____

26   [5] Broadcom's sleight-of-hand approach in mischaracterizing the scope of asserted
     claim 15 does not end there.  In discussing *Alice* step 2, Broadcom also quotes a
27   lengthy, non sequitur passage of the specification reciting supposed "objects,
     features and advantages" of certain "navigation software" that is nowhere to be
28   found the actual language of the claim.  Opp. at 21 (citing '375 patent at 2:1–9).

21

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abstract than a claim to sending data to another room, whether far away or merely next door.  Indeed, the '375 Patent concedes that conventional video on-demand systems "may present independent video and audio programming to a number of rooms."  '375 Patent at 1:14-16.  That is, distribution of data to remote locations—*i.e.*, to clients located separately from servers—is no different from describing distribution of data over the Internet, which by definition occurs remotely.  Indeed, the patents found patent-ineligible in *Two-Way* related to "a system for streaming audio/visual data over a communications system like the internet."  874 F.3d at 1332; *see also id.* at 1333 (describing "IP Multicasting" as "provid[ing] a way to transmit one packet of information to multiple recipients," such as "internet-based audio/visual conferencing servicing as well as radio-like broadcasts").

  ***Third***, contrary to Broadcom's contention, claim 15's recitation of generic physical components (*e.g.*, "servers" and "decoder devices[6]") to perform specified functions does not alchemize the '375 patent into patent-eligible subject matter.  It is axiomatic that "mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention," *Alice Corp. Pty.*, 573 U.S. at 223, and that "not every claim that recites concrete, tangible components escapes the reach of the abstract-idea inquiry," *In re TLI Commc'ns LLC Patent Litig.*, 823 F.3d 607, 611 (Fed. Cir. 2016) (concluding that a claim's "recited physical components" such as "a telephone unit" and a "server" . . . "merely provide a generic environment in which to carry out the abstract idea").  Moreover, under *Alice* step 1, a claim that is "directed to a result or effect that itself is the abstract idea and merely invokes generic processes and machinery"—as is the case here—is "not patent eligible."  *Two-Way Media*, 874 F.3d at 1337.  Thus, claim 15's invocation of "generic processes and machinery" does not elevate the abstract idea

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[6] Decoding is an abstract concept, long utilized to transmit information, *see RecogniCorp, LLC*, 855 F.3d at 1326, and therefore a "decoder device" is merely a generic computer component that performs an abstract decoding function.

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of distributing data through a network into a patent-eligible invention. *Id.*

## 2. Claim 15 of the '375 Patent is not inventive.

Broadcom contends that claim 15 is inventive because the patent "envisions an inventive way of distributing encoded streams of data, as opposed to physical media or analog video signals, to remote locations using a particular arrangement of devices." Opp. at 22; *see also id.* at 24 (identifying "delivery of compressed video content to remote locations" as an "unconventional technological solution"). This argument fails at the gate, because the abstract idea itself (*i.e.*, the distribution of data) cannot supply the inventive concept. *See ChargePoint, Inc.*, 920 F.3d at 773.

Indeed, Broadcom does not even contest that the devices recited in claim 15 (the "control server," "drive server," and "decoder devices") comprise conventional, off-the-shelf technology. *Compare* Memo at 24 *with* Opp. at 24. Likewise, Broadcom does not address, let alone overcome, the controlling Federal Circuit precedent cited by Netflix that claiming the use of such conventional technology cannot supply an inventive concept. *See* Memo at 24; *In re TLI Commc'ns*, 823 F.3d at 613–15 (holding "server" and "control unit" failed to supply an inventive concept); *RecogniCorp*, 855 F.3d at 1328 (holding limitation claiming use of a computer did not transform "the abstract idea of encoding and decoding" into patent-eligible subject matter); *Affinity*, 838 F.3d at 1270 (holding that "the delivery of media content to electronic devices was well known").

Tacitly recognizing that it cannot argue that claim 15 requires anything other than conventional technology, Broadcom cites *Amdocs (Israel) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288 (Fed. Cir. 2016), for the proposition that a claim directed to conventional technology nonetheless contains an inventive concept if used in an unconventional manner to provide an unconventional solution. *See* Opp. at 23–24. But *Amdocs* is inapplicable here, as the "unconventional technological solution" identified in *Amdocs*—"*enhancing* data in a distributed fashion" through a computer program—bears no resemblance to the purported solution here, which

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1    involves simply routing data through a network by conventional means—even if

2    that data lands next door.[7] *Amdocs*, 841 F.3d at 1300 (emphasis added).  And

3    whereas in *Amdocs* "the claim's enhancing limitation necessarily requires that these

4    generic components operate in an unconventional manner to achieve an

5    improvement in computer functionality," *id.* at 1300–01, here, nothing in the

6    language of claim 15 suggests, let alone requires, that the drive server, control

7    server, or decoder devices operate in an unconventional manner.[8]

8          Indeed, claim 15 does not prescribe any "technical means for performing the

9    functions that are arguably an advance over conventional computer and network

10    technology." *Elec. Power Grp.,* 830 F.3d at 1351.  The claim language recites

11    nothing, for example, about how the servers are used in an unconventional manner

12    to achieve any purported improved functionality in the server itself.  The

13    "navigation software" Broadcom points to as yielding a purported "cost savings" is

14    not even claimed in claim 15.  Opp. at 22 (quoting '375 Patent at 1:11–13).

15    Tellingly, Broadcom cites no evidence from the specification suggesting that the

16    drive server, control server, and decoder devices operate in an unconventional

17    manner.  And for good reason.  As Netflix noted in its motion, *see* Memo at 24, the

18    specification makes clear that those generic components need only "operat[e]

19    according to their ordinary functions," *Two-Way Media*, 874 F.3d at 1341; *see, e.g.*,

20    '375 Patent at 2:36-38 ("The server 102 may be implemented as a personal

21    computer or other appropriate server."); *id.* at 2:42-46 ("remote decoders . . . may

22    be located, in one example, in a set-top box [or] may be built into the tuner section

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23    [7] As noted above, despite Broadcom's efforts to spin "delivery of compressed video
content to remote locations" as an "unconventional technological solution," Opp. at

24    24 (quoting *Amdocs*, 841 F.3d at 1300), Federal Circuit law precludes Broadcom
from relying on the abstract idea itself (*i.e.*, the distribution of data) to be the source

25    of the inventive concept, *see ChargePoint, Inc.*, 920 F.3d at 773.

26    [8] There is nothing unconventional about having a "server" distribute content to
another server or to a client (*e.g.*, a decoder device).  That is inherent in what servers

27    *do*.  *See, e.g.*, *Two-Way Media*, 874 F.3d at 1340 (concluding ineligible under *Alice*
step 2 a claim requiring, *inter alia*, "receiving and transmitting a real-time media

28    stream from an intermediate server").

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of a television"); *id.* at 4:29-38 (noting that "personal computers" are capable of supporting "a number of remote decoders"); *id.* at 1:28-33 (describing decoders in conventional video on demand systems).  Indeed, not even Broadcom's citation to its FAC in support of its inventiveness argument elucidates *how* the drive server, control server, and decoder devices operate in an unconventional manner.  *See* Opp. at 23 (citing FAC ¶¶ 169–70).  Like claim 15 itself, Broadcom's FAC alleges only that the result of distributing data through a network occurs.  Broadcom's reliance on the abstract idea for the source of inventiveness is circular and contrary to Federal Circuit law, and the claim's invocation of conventional technology does not confer patent eligibility.  There is no "something more" here.

In any event, under controlling Federal Circuit law, in order to assert that claim 15 requires conventional technology to operate in an unconventional manner to supply an unconventional solution under *Amdocs*, Broadcom was obligated to pinpoint in its opposition where in the language of claim 15 the purported unconventional solution resides.  *See Two-Way Media*, 874 F.3d at 1339 (precluding "a purported innovative 'scalable architecture'" described in the specification from supplying an inventive concept because it was not claimed).  Broadcom has failed to do so.  As Broadcom effectively concedes, the '375 patent is directed to the abstract idea of distributing data through a network and requires only conventional computer technology without adding "something more."  The '375 patent fails at both steps of Alice and is thus patent-ineligible.

## III.   CONCLUSION

The asserted claims of the '079, '245, '992, and '375 patents are directed to abstract ideas implemented on conventional computer components.  That the first amended complaint describes them as novel over the prior art is irrelevant to subject matter eligibility.  Therefore, Netflix respectfully requests that the Court grant its motion to dismiss with prejudice.

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Respectfully submitted,

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